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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 12, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 02OD-349
02OD-351
Oahu

Amend prior Board actions of:

October 11, 2002 (agenda item D-20), Quitclaim of land from the United States of America, Department of Army to the State of Hawaii; Lease of Land to the United States of America, the Department of Army, Waialua, Oahu TMK (1) 6-8-14 por. 01, 6-9-01:05 & 16; and

August 22, 2003 (agenda item D-20), Amend Prior Board Action at its meeting of October 11, 2002 (agenda item D-21), Cancellation of Governor's Executive Order No. 1530, Kaena, Waialua, Oahu, Tax Map Key: (1) 6-9-14:01 portion and (1) 6-9-01:29

HISTORY:

By way of National Defense Authorization Act, 1991, Public Law 101-510 Section 2831 ("PL 101-510"), the Congress of the United States directed the Secretary of the Army ("SOA") to convey to the State of Hawaii ("State") land comprising a portion of Dillingham Military Reservation ("DMR") that had previously been ceded to the United States by the State of Hawaii. Congress conditioned this conveyance on the execution of an agreement acceptable to the SOA providing for joint civilian and military use as an airfield by the State and the US Army.

The DMR sites covered by PL 101-510 ("DMR Sites") are summarized in the following table and are delineated on Exhibit 1, attached:

TMK	Land Area (Acres)	Current Use	Lot Ref
6-8-14:01 por.	63.267	Portion of Dillingham airfield	Lot 1-B-3
6-8-14:01 por.	3.912	Water tank facilities supporting airfield use	Parcel 1
6-9-01:05	9.996	Portion of highway	Lot 1-B-2
6-9-01:16	19.237	Beach	Lot 1-B-1
6-9-01:29	0.298	Unencumbered/former UST site	Parcel 2

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In accordance with PL 101-510 the Board of Land and Natural Resources ("BLNR"), at its meeting of October 11, 2002, approved agenda item D-20, recommending:

1. The acceptance of a quitclaim of Lot 1-B-1, TMK (1) 6-9-01:16 from the United States of America, Department of Army ("Army");
2. The acceptance of a quitclaim of Lot 1-B-2 and Lot 1-B-3, TMK (1) 6-9-01:05 and (1) 6-8-14:01 portion, respectively, from the Army;
3. The issuance of a lease covering Lot 1-B-3, TMK (1) 6-8-14:01 portion by the State Department of Transportation ("DOT") to the Army; and
4. The approval and recommendation to the Governor to issue an Executive Order setting aside Lot 1-B-3 to the DOT for airport purposes.

In agenda item D-20, staff discussed the Army's request to place a restriction on Lot 1-B-1 prohibiting the use of lights between the hours of dusk and dawn except for emergency purposes.

At this same meeting, BLNR also approved agenda item D-21, recommending:

1. The approval and recommendation to the Governor for the issuance of an executive order canceling Governor's Executive Order No. 1530¹, which covered Parcels 1 and 2; and
2. The approval and recommendation to the Governor for the issuance of an executive order setting aside Parcel 1 to the State Department of Transportation.

Staff reported in agenda item D-21 that approval of a set aside of Parcel 2 to DLNR's Division of Forestry and Wildlife ("DOFAW") would be requested at a later meeting. At the time, staff also acknowledged that Lot 1-B-1 would remain unencumbered.

Subsequently, at its meeting of August 22, 2003, under agenda item D-20, staff reported to BLNR that "Army is preparing a quitclaim deed regarding the return of the land under GEO 1530 to the State. Although a GEO canceling the previous GEO should suffice the purpose for the transfer of land, staff has no objections to the quitclaim." Accordingly, BLNR approved to amend its previous action of October 11, 2003, under agenda item D-21, by "accepting the quitclaim of (1) 6-8-14:01 por. (Parcel 1) and (1) 6-9-01:29 (Parcel 2) from the Army."

Pursuant to the aforementioned BLNR actions, the Army submitted a draft quitclaim deed covering only Lot 1-B-1 and Parcel 2 to the DLNR. Under terms of this deed, the United States of America, acting by and through the Deputy Assistant Secretary of the Army

¹ In 1952, Governor's Executive Order No. 1530 set aside 4.21 acres to Department of Defense, United States of America for Dillingham Air Force Base Facilities purposes.

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("USA"), agreed to indemnify the State for its past actions and hold the State harmless against any future complaint arising from Army activities on the site that may be actionable under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") of 1980, 42 U.S.C. Section 9620(h)(1) to (3), as required by CERCLA. Likewise, the USA required a similar indemnification from the State for State activities.

Consequently, a request to approve the indemnification provision was granted by the Governor pursuant to HRS Section 29-15.5; see "Exhibit 2".

Thereafter, a quitclaim deed covering TMKs (1) 6-9-01:16 and 29 was approved by the Department of the Attorney General ("DAG") and executed by State of Hawaii, Board of Land and Natural Resources.

Whereas the State Department of Transportation ("DOT") had been in negotiations with the Army for approximately 12 years and indicated it was close to reaching a mutual agreement with the Army, DOT was allowed to continue negotiations regarding Lot 1-B-3, Parcel 2 and Lot 1-B-2. As with the DLNR, the Army submitted a quitclaim deed covering these three parcels, to the DOT, which was also approved by the DAG and executed by the DOT.

Notwithstanding approval of both the DLNR and DOT quitclaim deeds by the Army's Assistant District Counsel, both deeds were subsequently rejected by the SOA because:

1. The agreement for joint civilian and military use of Lot 1-B-3 needed to be perpetual in nature; and
2. The SOA requested all DMR lands be conveyed by a single quitclaim deed to a single State agency.

In response to SOA's first objection, at its meeting of December 10, 2004, under agenda item D-3, the BLNR amended its prior action of October 11, 2002, agenda item D-20, by:

1. Rescinding its approval of the issuance of a lease covering Lot 1-B-3 by the DOT to the Army; and
2. Approving and recommending to the Governor an issuance of an EO setting aside Lot 1-B-2 to the DOT for public roadway purposes.

Considering the statutory limitations of State leases which prohibit perpetual terms, this submittal discussed a perpetual easement being established over Lot 1-B-3 to allow for joint civilian and military use in lieu of the issuance of a lease.

To address the SOA's second objection, the Army attempted to merge the two separate quitclaim documents, which were previously executed by DLNR and DOT, into a single comprehensive quitclaim deed to the State of Hawaii, BLNR.

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However, the resulting draft document was unacceptable to the State and revisions to both the draft quitclaim deed and MOA documents were requested by the State.

REMARKS

Considering the unanticipated complexities in merging the two documents, the Army and the SOA have now agreed to convey the DMR Sites via two separate quitclaim deeds to DLNR and DOT. Notwithstanding, the SOA is not agreeable to the two quitclaim deeds previously executed by respective State departments, and will return all copies of the previously BLNR executed quitclaim deed prior to BLNR executing any revised documents.

Consequently, BLNR is again being asked to accept a quitclaim of interest only in Lot 1-B-1 and Parcel 2. The draft quitclaim deed is attached as Exhibit 3. Staff notes that the terms contained in the current draft quitclaim deed differ from the quitclaim previously executed by the BLNR, as follows:

1. The attached draft quitclaim will contain a metes and bounds description of Parcel 2 as well as a survey map; and
2. The prior deed restriction prohibiting the use of lights on Lot 1-B-1 has been amended to read "No lights will be used on Lot 1-B-1 between the hours of dusk and dawn, except for emergency situations affecting health and safety and no habitable structures will be constructed. Upon the request of the Army, both outside and inside lighting, that may have an adverse effect on military flight operations conducted at night, will be turned off or adequately subdued on Parcel 2."

Staff has argued that a restriction of habitable structures is unnecessary because Lot 1-B-1 is within the State's Conservation District's Limited Sub-Zone. However, considering conservation laws and zoning ordinances are subject to possible amendments, waiving the proposed restriction is not acceptable to the Army. Moreover, the Army requires a Memorandum of Agreement ("MOA") to be entered into whereby BLNR agrees to accept the quitclaim of Lot 1-B-1 and Parcel 2. A draft of the MOA is attached as Exhibit 4.

Staff concedes that pursuant to PL 101-510, this conveyance is conditioned on the execution of an agreement with terms acceptable to the SOA.

Whereas Lot 1-B-1 is subject to frequent unauthorized temporary shelters and camping, staff opines that Land Division does not have the resources to effectively manage Lot 1-B-1. Nonetheless, if the conveyance of Lot 1-B-1 and Parcel 2 are not accepted by the BLNR, the Army may have the ability to publicly dispose of these former ceded lands by, e.g., selling the lands at auction.

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Consequently, staff recommends the BLNR again approve acceptance of the return of these ceded lands under the terms and conditions contained within the attached draft quitclaim deed and MOA documents, as is directed by PL 101-510.

Staff is further requesting BLNR to delegate to the Chairperson the authority to further negotiate and approve non-substantive amendments to the draft quitclaim deed and MOA, as may be requested by the SOA.

Whereas DOFAW is currently using Parcel 2 as an endangered plant nursery, staff further requests that the Board approve and recommend to the Governor the issuance of an Executive Order ("EO"), placing Parcel 2 under the management of DOFAW for endangered species recovery and other appropriate forestry purposes.

Similar to the proposed conveyance to BLNR, the remaining DMR Sites, including a portion of Dillingham Airfield managed by DOT, will be conveyed to DOT subject to a perpetual joint civilian and military operations use restriction. Accordingly, newly drafted quitclaim and MOA documents covering the remaining DMR Sites have been reviewed by the DAG, executed by DOT and now awaits review and approval by the SOA.

Whereas DOT requires the maintenance of height restrictions across Lot 1-B-1 for flight clearance purposes, staff is requesting that the Board approve and recommend to the Governor the issuance of an EO placing Lot 1-B-1 under the management and control of DOT for purposes ancillary to its joint civilian and military operations at Dillingham airfield.

The Army, SOA, DOFAW and the Department of the Attorney General have reviewed the attached Quitclaim Deed and the Memorandum of Agreement drafts and have no objections at this time.

RECOMMENDATION: That the Board:

1. Amend its prior action of October 11, 2002 under agenda item D-20 by rescinding BLNR's approval of the acceptance of a quitclaim of Lot 1-B-2 and Lot 1-B-3, TMK (1) 6-9-01:05 and (1) 6-8-14:01 portion, respectively, from the Army;
2. Amend its prior action of August 22, 2003 by rescinding BLNR's approval of accepting the quitclaim of (1) 6-8-14:01 por.;
3. Approve of a Memorandum of Agreement between the State of Hawaii, through its Board of Land and Natural Resources under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

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- A. Review and approval by the Department of the Attorney General; and
 - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State;
4. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands identified as TMK (1) 6-9-01:02 to Department of Land and Natural Resource, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
5. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands identified as TMK (1) 6-9-01:16 to Department of Transportation under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

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6. Delegate authority to Chair to negotiate and approve any further non-substantive changes to the attached Quitclaim Deed and Memorandum of Agreement, as may be required.

Respectfully Submitted,



Gavin Chun
Project Development Specialist

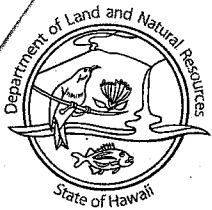
APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

LINGLE
OF HAWAII

03: 6512210



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

April 22, 2003

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

MEMORANDUM

TO: The Honorable Linda Lingle
Governor of the State of Hawaii

THROUGH: The Honorable Mark J. Bennett
Attorney General of the State of Hawaii *Mark Bennett*

FROM: Peter T. Young *Peter T. Young*
Chairperson, Board of Land and Natural Resources

RE: Request to approve indemnification of the federal
government under section 29-15.5, Hawaii Revised
Statutes (1998) ("HRS section 29-15.5").

Proposed Quitclaim Deed ("Deed") from the
United States of America, acting by and through
the Deputy Assistant Secretary of the Army
("USA") to the Board of Land and Natural
Resources, State of Hawaii ("State").

Pursuant to HRS section 29-15.5, we respectfully
request your approval of an indemnification provision in
the attached Quitclaim Deed by which the State would agree
to indemnify and defend the USA. Under the terms of the
Deed, the USA is indemnifying the State for its past
actions, and will hold it harmless against any future
complaint arising from US activities on the site that may
be actionable under the Comprehensive Environmental
Response, Compensation, and Liability Act of 1980,
("CERCLA"), 42 U.S.C. section 9620(h)(1) to (3), as
required by CERCLA. The USA is requiring, in turn, a
mutual covenant from the State for similar state

EXHIBIT "2"

activities, because both the State and the USA are past users of the property.

A. HRS section 29-15.5 Requirements

Under HRS section 29-15.5, the State may agree to indemnify and defend a federal agency if the following three preconditions are satisfied: (1) Federal law expressly or by clear implication requires the indemnity provision; (2) the Governor and the Attorney General both approve the proposed indemnification; and (3) the comptroller has either (a) obtained an insurance policy to cover the potential risks posed by the indemnity provision or (b) determined that obtaining such a policy is not in the best interests of the State.

B. Applicable federal law

There are two pertinent federal statutes calling for the indemnity provision. One is the Anti-Deficiency Act, 31 U.S.C. section 1341 ("Anti-Deficiency Act"), which prohibits federal agencies, including as the Department of the Army, from involving the U.S. government in an obligation for the payment of money, including an obligation to pay a future contingent liability, without an appropriation. The other is the Defense Authorization Act of 1991, Public Laws 101-510 section 2831(d), 104 Stat. 1795, which requires the Army to convey the subject property back to the State, and authorizes the Secretary of the Army to require terms and conditions in connection with the conveyance as the Secretary deems appropriate to protect the interests of the USA. The USA has indicated that it requires the indemnity provision provided in the Quitclaim Deed to protect the USA from violating the Antideficiency Act, and to satisfy the conditions of the Defense Authorization Act of 1991.

C. Indemnity protection to be provided

The indemnity protection the State will be providing under the Quitclaim Deed is as follows:

The GRANTEE [State] releases GRANTOR [USA] from any future claims against the GRANTOR by the GRANTEE that may result from the activities of the GRANTEE from the date the Property is conveyed to GRANTEE including activities of the GRANTEE that cause a release or threat of release of any hazardous substance identified in the "Preliminary Assessment Screening" (PAS) dated January 23, 1996. In the event that any claims are brought by other parties, the GRANTEE shall hold harmless, indemnify and defend the GRANTOR, to the extent allowed by State of Hawaii law from and against any and all claims, demands, penalties, fines, lawsuits and other proceedings, judgments, awards, and costs and expenses arising out of, or in any way predicated on the activities of the GRANTEE from the date the Property is conveyed to the GRANTEE. The GRANTEE shall hold harmless, indemnify and defend the GRANTOR from and against all claims, demands, penalties, fines, lawsuits and other proceedings, judgments, awards, and costs and expenses, including actions and claims seeking to allocate or share response or remedial costs under CERCLA, which do not arise out of or which are not predicated upon hazardous substances or contamination arising out of the activities of the Department of Defense.

D. Insurance

Before executing the Quitclaim Deed, the State will be working with the comptroller to either obtain an insurance policy meeting the requirements of HRS section 29-15.5 or a determination by the comptroller that it is not in the best interest of the State to obtain insurance.

The Honorable Linda Lingle

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E. Conclusion

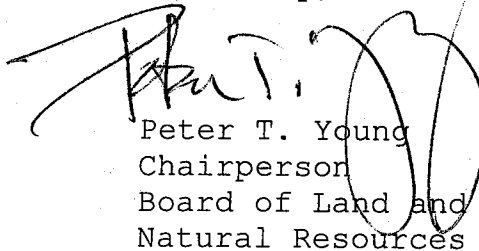
The transfer of the property interest to this portion of the Dillingham Airfield property is required by federal law, Public Laws 101-510, section 2831 [104 Stat. 1795]. We respectfully request your approval of the foregoing indemnity protection for the USA so we may proceed with finalizing the Quitclaim Deed.

F. Attorney General review

The Attorney General has reviewed and approved of the proposed Quitclaim Deed.

If you have any questions, please do not hesitate to let me know.

Sincerely,



Peter T. Young
Chairperson
Board of Land and
Natural Resources

Recommend Approval:



Mark J. Bennett
Attorney General of the
State of Hawaii

MAY 09 2003

Date

APPROVED/DISAPPROVED:



LINDA LINGLE
Governor of the State of Hawaii

6/16/03

Date

The Honorable Linda Lingle

April 22, 2003

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Enclosures:

- Exhibit A - Proposed Quitclaim Deed
- Exhibit B - E-mail from Patricia Billington
Assistant District Counsel,
U.S. Army Engineer District,
Honolulu
- Exhibit C - HRS section 29-15.5 (1998)
- EXHIBIT D - section 1341 of the
Anti-Deficiency Act,
31 U.S.C. section 1341
- EXHIBIT E - section 2831 of the Defense
Authorization Act of 1991,
Public Law 101-510,
104 Stat. 1795.

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That the UNITED STATES OF AMERICA, acting by and through the Deputy Assistant Secretary of the Army, hereinafter called the "GRANTOR," under and pursuant to the authority contained in the National Defense Authorization Act for Fiscal Year 1991, Public Law 101-510 Section 2831 (104 Stat. 1795), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby remise, release and forever quitclaim unto the STATE OF HAWAII, acting by and through its Board of Land and Natural Resources, whose principal place of business and mailing address are 1151 Punchbowl, Honolulu, Hawaii 96813, hereinafter called the "GRANTEE," its successors and assigns, subject to the conditions, covenants, restrictions, and reservations hereinafter set forth, all of GRANTOR'S right, title, and interest to lands described as:

- A. LOT 1-B-1, which is identified as TMK (1) 6-9-1:16. This lot is recorded as Land Court Application No. 588, Map 6, with an area of 19.237 acres.
- B. Lot 2, which is identified as TMK (1) 6-9-1:29. This lot is recorded as Land Court Application No. 588, Map 6, with an area of .298 acres.

The above property shall hereinafter be referred to as the "Property", and is a portion of Dillingham Military Reservation, situated at Kaena, Waialua, Island of Oahu, State of Hawaii.

The conveyance, however, is SUBJECT TO the following additional restrictions, covenants, conditions, and reservations, now existing or of record, including but not limited to the following:

1. CERCLA Covenant and Access Clause: Pursuant to 42 U.S.C. §9620(h) (1) to (3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq. ("CERCLA"), as amended, the following notice of hazardous substances with respect to the Property is provided to the extent such information is available on the basis of a complete search of GRANTOR'S files and records: GRANTOR has found that no hazardous substances were stored for one year or more, or known to have been released or disposed of, on the Property.

2. In accordance with 42 U.S.C. §9620(h) (3) (A) (ii) and 42 U.S.C. §9620(h) (3) (B), the GRANTOR hereby covenants and warrants to the GRANTEE that:

- a. All remedial action necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken before the date the Property is conveyed from GRANTOR to GRANTEE; provided, however, that this covenant shall not apply in any case in which the person or entity to whom the Property is transferred is a potentially responsible party with respect to the Property.
- b. Any additional remedial action found to be necessary after the date of this conveyance regarding hazardous substances that is the responsibility of the GRANTOR shall be conducted by GRANTOR.

3. In accordance with 42 U.S.C. §9620(h)(3)(A)(iii), the GRANTOR hereby reserves a right-of-access to the Property in any case in which remedial or corrective action is found to be necessary after the date of this conveyance of the Property, or in any case such access is necessary to carry out a response action or corrective action on adjoining property. In exercising this right-of-access, except in case of imminent endangerment to human health or the environment, the GRANTOR shall give the GRANTEE, or the then record owner, reasonable prior notice. GRANTEE agrees that, notwithstanding any other provisions of the Deed, the GRANTOR assumes no liability to the GRANTEE, its successors or assigns, should remediation of the Property interfere with the use of the Property. The GRANTEE shall not through construction, operation or maintenance interfere with any remediation or response action conducted by the GRANTOR under this paragraph. The GRANTEE, or the then record owner, shall have no claim against the GRANTOR or any of its officers, agents, employees or contractors solely on account of any such interference resulting from such remediation.

4. No lights will be used on the Property between the hours of dusk and dawn, except for emergency situations affecting health and safety.

5. NON-DISCRIMINATION. With respect to activities related to the Property, the GRANTEE hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964 (Public Law No. 88-352) and all requirements imposed by or pursuant to the regulations issued pursuant to the Act and now in effect, to the end that, in accordance with said Act and regulations, no person in the United States shall, on the ground of race, color, national origin, sex, or handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity related to the Property of the GRANTEE, its successors or assigns.

6. ANTI-DEFICIENCY ACT. The GRANTOR's obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payment by the GRANTOR in violation of the Anti-Deficiency Act.

7. The "Environmental Assessment and Finding of No Significant Impact for Return of Ceded Lands at Dillingham Military Reservation, Oahu, Hawaii, to the State of Hawaii," concluded that the proposed transfer of the ceded lands at Dillingham Military Reservation to the State of Hawaii would not have any adverse impacts on the environment. As a result, it has been determined that the proposed action does not constitute a major Federal action having significant effects on the quality of the human environment, and therefore, does not require the completion of an Environmental Impact Statement, as defined by Army Regulation No. 200-2.

8. A Finding of No Significant Impact (FONSI) has been prepared and a notice of availability of the Environmental Assessment (EA) and FONSI have been published in the State of Hawaii Department of Health, Office of Environmental Quality Control Bulletin, "The Environmental Notice" on 18 July 1998.

9. Based on the findings in the FONSI and EA, there are minimal health and safety risks that would result from the transfer of the property to GRANTEE for the proposed use.

10. The GRANTEE accepts said Property in its present condition without liability to the GRANTOR except (1) to the extent provided in paragraphs 1-3 above, and (2) as provided by applicable federal law, including but not limited to the

"Environmental Restoration, Defense" provision of the Department of Defense Appropriations Act, 1993 (Public Law 102-396).

11. The GRANTEE acknowledges that it has reviewed the "Environmental Assessment and Finding of No Significant Impact for Return of Ceded Lands at Dillingham Military Reservation, Oahu, Hawaii, to the State of Hawaii," dated May 1998, and the "Preliminary Assessment Screening Dillingham Military Reservation Transfer of Ceded Lands from the U.S. Army to State of Hawaii," dated Jan 1996, prior to accepting this deed, that it is aware of and accepts the physical condition and environmental status of the Property on the date the Property is conveyed to GRANTEE and deems it to be safe for its intended use.

12. The GRANTEE releases GRANTOR from any future claims against the GRANTOR by the GRANTEE that may result from the activities of the GRANTEE from the date the Property is conveyed to GRANTEE including activities of the GRANTEE that cause a release or threat of release of any hazardous substance identified in the "Preliminary Assessment Screening" (PAS) dated January 23, 1996. In the event that any claims are brought by other parties, the GRANTEE shall hold harmless, indemnify and defend the GRANTOR, to the extent allowed by State of Hawaii law from and against any and all claims, demands, penalties, fines, law suits and other proceedings, judgments, awards, and costs and expenses arising out of, or in any way predicated on the activities of the GRANTEE from the date the Property is conveyed to the GRANTEE. The GRANTEE shall hold harmless, indemnify and defend the GRANTOR from and against all claims, demands, penalties, fines, lawsuits and other proceedings, judgments, awards, and costs and expenses, including actions and claims seeking to allocate or share response or remedial costs under CERCLA, which do not arise out of or which are not predicated upon

hazardous substances or contamination arising out of the activities of the Department of Defense.

13. TO HAVE AND TO HOLD the same, together with all and singular the rights, powers, privileges, and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the GRANTOR in the Property, either in law or in equity, unto GRANTEE and its successors and assigns, forever, except as herein provided.

14. The GRANTEE, by the acceptance of this Quitclaim Deed, covenants for itself, its successors and assigns, and every successor in interest to the Property hereby conveyed, or any part thereof, that the said GRANTEE and such successors and assigns, shall not discriminate upon the basis of race, color, religion, national origin, sex, or handicap in the use, occupancy, sale or lease of the Property, or in the employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

15. The Property shall be deemed conveyed from the GRANTOR to GRANTEE when the deed is recorded by the State in the State Bureau of Conveyances.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2003, by direction of the Assistant Secretary of the Army (IL& E).

UNITED STATES OF AMERICA

By: _____
GRANTOR

STATE OF HAWAII

By: _____
Its Board of Land & Natural Resources
GRANTEE

Approved by the Board of Land and Natural Resources on

_____, 2003.

APPROVED AS TO FORM:

Deputy Attorney General



"Billington, Pat E
POH"
<Pat.E.Billington@po
h01.usace.army.mil>

04/21/2003 02:44 PM

To: "Billington, Pat E POH" <Pat.E.Billington@poh01.usace.army.mil>,
"Jean.P.Creadick@hawaii.gov" <Jean.P.Creadick@hawaii.gov>
cc: "Larson, Carl A POH" <Carl.A.Larson@poh01.usace.army.mil>,
"Faggioli, Vincent J POH" <Vincent.J.Faggioli@poh01.usace.army.mil>
Subject: RE: Dillingham Airfield

To All - Please note this correction: this transfer is mandated by Section 2831 of PL 101-510, rather than Section 2832. Thank you, Pat

-----Original Message-----

From: Billington, Pat E POH

Sent: Wednesday, April 16, 2003 4:20 PM

To: 'Jean.P.Creadick@hawaii.gov'; Billington, Pat E POH

Cc: Larson, Carl A POH; Faggioli, Vincent J POH

Subject: RE: Dillingham Airfield

Honolulu Engineer District
Office of Counsel
April 16, 2003

Jean P. Creadick, Esq.
Office of the Attorney General
State of Hawaii

Dear Jean,

The indemnity provision in the Dillingham quitclaim deed is authorized by Section 2832(d) of PL 101-510 of the Defense Authorization Act of 1991. Section 2832 requires the Army to convey the Dillingham property back to the State, and subsection (d) says:

(d) Additional Terms and Conditions. The Secretary may require such additional terms and conditions in connection with the conveyance under this section as the Secretary determines appropriate to protect the interests of the United States.

Pursuant to the authority granted by Congress in this federal statute, the Secretary of the Army is requiring the State to indemnify the United States in the Dillingham conveyance documents.

EXHIBIT "B"

The need for this protection is based in part on the State's use of regulated / hazardous materials at the airport as described in the January 23, 1996 Preliminary Assessment Screening. It is intended to achieve mutuality between the parties, especially in view of the fact that the State has actively used the property for many years, and has used regulated materials in the course of its operations there. The United States is indemnifying the State for its past actions, and will hold it harmless against any future complaints arising from US activities on the site that may be actionable under CERCLA, as required by CERCLA. To protect its interests, the US is requiring a mutual covenant from the State for similar State activities, since both the State and the US are past users of the property.

Please call or email me if you have any questions or concerns.

Sincerely,

Pat

Patricia E. Billington
Assistant District Counsel
US Army Engineer District, Honolulu
Building 230, Fort Shafter, Hawaii
96858-5440
Phone (808) 438-8365
FAX (808) 438-9853
pat.e.billington@usace.army.mil

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CHAPTER 29 FEDERAL AID

PART I. COORDINATOR

SECTION

29-1 ESTABLISHMENT OF OFFICE

PART II. GENERAL PROVISIONS

29-15.5 INDEMNIFICATION OF FEDERAL AGENCIES

29-17 TO 23 REPEALED

29-24 INTERAGENCY FEDERAL REVENUE MAXIMIZATION REVOLVING FUND

29-25 DEPARTMENT OF EDUCATION; FEDERAL FUNDS; GENERAL FUND OFFSET

Cross References

Hawaii performance partnerships board, see §§27-51 to 27-54.

PART I. COORDINATOR

§29-1 Establishment of office. There shall be in Washington, District of Columbia, a Hawaii office of federal programs coordinator. The office shall be headed by a coordinator who shall be appointed and removed by the governor, not subject to chapters 76 and 89. Effective July 1, 1982, the salary shall be \$38,610 a year. Effective July 1, 1986, the salary of the federal programs coordinator shall be \$0 a year. The coordinator shall appoint necessary staff, within available appropriations, not subject to chapters 76 and 89.

The office is placed within the department of budget and finance for administrative purposes. [L 1965, c 237, §1; Supp. §12A-1; HRS §29-1; am L 1969, c 127, §5; am L 1975, c 58, §10; am L 1982, c 129, §2; am L 1986, c 128, §2; am L 2002, c 148, §3]

PART II. GENERAL PROVISIONS

§29-15.5 Indemnification of federal agencies. (a) To receive federal aid, assistance, support, benefits, services, and interests in or rights to use federal property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a United States agency, its officers, agents, and employees when all of the following conditions are satisfied:

- (1) Federal law expressly or by clear implication requires the indemnity provision;
- (2) The governor, following a favorable review by the department of the attorney general, approves the State's proposed indemnification; and
- (3) The comptroller, pursuant to chapter 41D, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision or has determined that it is not in the best interest of the State to obtain insurance.

(b) An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State under chapter 661 or otherwise waive the State's sovereign immunity.

(c) This section shall not affect sections 201G-312(b)(2), 212-7, or 523A-64. [L 1997, c 168, §1; am L 1998, c 11, §2]

§§29-17 to 23 REPEALED. L 1994, c 186, §19.

EXHIBIT "C"

31 USCS § 1341

MONEY AND FINANCE

SUBCHAPTER III. LIMITATIONS, EXCEPTIONS, AND PENALTIES

§ 1341. Limitations on expending and obligating amounts

(a)(1) An officer or employee of the United States Government or of the District of Columbia government may not—

(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

(B) involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law;

(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 USCS 902]; or

(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 USCS § 902].

(2) This subsection does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government.

(b) An article to be used by an executive department in the District of Columbia that could be bought out of an appropriation made to a regular contingent fund of the department may not be bought out of another amount available for obligation.

(Sept. 13, 1982, P. L. 97-258, § 1, 96 Stat. 923; Nov. 5, 1990, P. L. 101-508, Title XIII, Subtitle B, § 13213(a), 104 Stat. 1388-621.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Revised Section	Source (USCS)	Source (Statutes at Large)
1341(a).....	31:665(a), (d)(2)(last sentence related to spending and obligations).....	R.S. § 3679(a), (d)(2)(last sentence related to spending and obligations); March 3, 1905, ch 1484, § 4(1st par.), 33 Stat. 1257; Feb. 27, 1906, ch 510, § 3, 34 Stat. 48; restated Sept. 6, 1950, ch 896, § 1211, 64 Stat. 765.
1341(b).....	31:669(words after semicolon)	Aug. 23, 1912, ch 350, § 6(words after semicolon), 37 Stat. 414.

In subsection (b), the words "another amount available for obligation" are substituted for "any other fund" for consistency in the revised title.

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§ 1749bbb-8; 19 U
2295b, 3723, 585
§ 891d; 40 USCS §
USCS § 377b; 49 I

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United States. The Secretary shall deposit any such amount into the special account established pursuant to section 204(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C 485(h)).

(c) **LEGAL DESCRIPTION OF LANDS.**—The exact acreages and legal descriptions of the lands to be conveyed under this section shall be determined by surveys satisfactory to the Secretary. The cost of the surveys shall be borne by the City.

(d) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the transactions authorized by this section as the Secretary determines appropriate to protect the interests of the United States.

SEC. 2830. LAND CONVEYANCE, ROBINS AIR FORCE BASE, GEORGIA

(a) **IN GENERAL.**—Subject to subsections (b) through (e), the Secretary of the Air Force may sell and convey all right, title, and interest of the United States in and to a parcel of real property, including improvements thereon, consisting of a total of approximately 70 acres, and comprising a portion of Robins Air Force Base, Georgia.

(b) **COMPETITIVE BID REQUIREMENT, MINIMUM SALE PRICE.**—(1) The Secretary shall use competitive procedures for the sale of property referred to in subsection (a).

(2) In no event may any of the property referred to in subsection (a) be sold for an amount less than the fair market value, as determined by the Secretary.

(c) **USE OF PROCEEDS.**—The Secretary shall deposit proceeds received from the sale of property authorized by this section in the special account established pursuant to section 204(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C 485(h)).

(d) **LEGAL DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey that is satisfactory to the Secretary. The cost of such survey shall be borne by the purchaser.

(e) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with any transaction authorized by this section as the Secretary considers appropriate to protect the interests of the United States.

SEC. 2831. LAND CONVEYANCE, DILLINGHAM MILITARY RESERVATION, HAWAII

(a) **IN GENERAL.**—Subject to subsections (b), (c), and (d), the Secretary of the Army shall convey to the State of Hawaii, without consideration, all right, title, and interest of the United States in and to a parcel of land, together with improvements thereon, consisting of approximately 87 acres, that comprises a portion of Dillingham Military Reservation at Mokuleia, Hawaii, and which was previously ceded, without consideration, to the United States by the State of Hawaii for use by the Armed Forces of the United States.

(b) **CONDITION.**—The conveyance authorized by subsection (a) shall be made on condition that the State of Hawaii enter into an agreement with the Secretary of the Army that is acceptable to the Secretary and provides for joint civilian and military use of the property as an airfield by the State of Hawaii and the Army.

(c) **DESCRIPTION OF PROPERTY.**—The exact acreage and legal description of the property referred to in subsection (a) shall be

EXHIBIT "E"

determined by a survey satisfactory to the Secretary. The cost of the survey shall be borne by the State of Hawaii.

(d) **ADDITIONAL TERMS AND CONDITIONS.**—The Secretary may require such additional terms and conditions in connection with the conveyance under this section as the Secretary determines appropriate to protect the interests of the United States.

SEC. 2832. LAND CONVEYANCE, SOUTH BEND, INDIANA

(a) **IN GENERAL.**—Subject to subsections (b) through (f), the Secretary of the Army shall convey to the Civic Foundation, Incorporated, a not-for-profit corporation organized and operating pursuant to the laws of the State of Indiana, or the City of South Bend, Indiana, or to both, all right, title, and interest of the United States in and to real property aggregating approximately 4.15 acres, including improvements thereon, located at 1733 East Northside Boulevard, South Bend, Indiana, and known as the Northside Army Reserve Training Center.

(b) **CONSIDERATION.**—(1) In consideration for the conveyance made under subsection (a), the Civic Foundation or the City, as the case may be, shall, in accordance with the agreement required by subsection (c), be required to—

(A) convey to the United States all right, title, and interest in and to a parcel of real property of approximately eight acres, together with improvements thereon, located at 2402 Rose Street, South Bend, Indiana, and known as the Maple Lane School;

(B) repair and rehabilitate the Maple Lane School in accordance with plans and specifications approved by the Secretary;

(C) construct an access driveway to the Maple Lane School property from Ironwood Drive; and

(D) design to Department of the Army standards and construct additional improvements on the Maple Lane School property in accordance with the requirements, and subject to the approval, of the Secretary.

(2) The cost of the repair, rehabilitation, construction work, and other improvements carried out under subparagraphs (B), (C), and (D) of paragraph (1) (including but not limited to the cost of any and all architectural, engineering design, environmental assessment and remediation, construction financing, and all legal and inspection fees for the additional improvements) shall be paid as follows:

(A) The Civic Foundation or the City, or both, shall pay a total of \$500,000. Any funds expended by the Civic Foundation or the City pursuant to obligations under paragraph (1) before the execution of the agreement required by subsection (c) shall be considered as part of this payment.

(B) After payment by the Civic Foundation or the City, or both, as provided in subparagraph (A), the Secretary of the Army shall pay any remaining amount necessary to complete the work described in subparagraphs (B), (C), and (D) of paragraph (1), out of funds available for such purpose.

(3) The amount of \$397,000 is hereby authorized to be appropriated to pay for the design and construction of improvements authorized by paragraph (1)(D).

(c) **AGREEMENT.**—In order to implement this section, the Secretary shall enter into an agreement with the Civic Foundation or the City, or both.

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That effective as of the _____ day of _____, 20____, the UNITED STATES OF AMERICA, acting by and through the Deputy Assistant Secretary of the Army, hereinafter called the "GRANTOR," under and pursuant to the authority contained in the National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510 Section 2831, 104 Stat. 1795, does hereby remise, release and forever quitclaim unto the STATE OF HAWAII, acting by and through its Board of Land and Natural Resources, whose principal place of business and mailing address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, hereinafter called the "GRANTEE," its successors and assigns, subject to the conditions, covenants, restrictions, and reservations hereinafter set forth, all of GRANTOR's right, title, and interest to lands described as:

- A. LOT 1-B-1, situate at Kealia and Kaena, Wailua, Oahu, Hawaii, which is identified as TMK (1) 6-9-1:16, TCT 3633. This lot is shown on Land Court Application 588, Map 6, filed in the Office of the Assistant Registrar of the Land Court on the State of Hawaii, with an area of 19.237 acres, more particularly described in Exhibit "A" attached hereto and made a part hereof.
- B. PARCEL 2, situate at Kaena, Wailua, Oahu, Hawaii, which is identified as TMK (1) 6-9-1:29 with an area of .298 acres, more particularly described in Exhibit "B" and shown on Exhibit "C," both attached hereto and made parts hereof.

The above property shall hereinafter be referred to as the "Property," and is a portion of Dillingham Military Reservation, situated at Kaena, Waialua, Island of Oahu, State of Hawaii.

The conveyance, however, is SUBJECT TO the following additional restrictions, covenants, conditions, and reservations, now existing or of record, including but not limited to the following:

1. CERCLA Notice: Pursuant to 42 U.S.C. §9620(h)(3)(A)(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§9601 et seq. (CERCLA), as amended, the following notice of potential hazardous substances with respect to the Property is provided to the extent such information is available on the basis of a complete search of GRANTOR's files and records and in accordance with information contained in a "Preliminary Assessment Screening" (PAS) dated January 23, 1996. GRANTOR has found that the following was stored, for one year or more, on the Property:

a. The GRANTOR, from a time which is unknown, owned and operated two 50,000-gallon Underground Storage Tanks (UST) on Parcel 2 until June 1995 when the tanks were removed by Morrison Knudsen Corporation. According to the closure report, analytical results did not indicate a product release from the system and a clean closure was concluded.

2. Pursuant to 42 U.S.C §9620(h)(3)(A)(ii), the GRANTOR hereby covenants and warrants to the GRANTEE that:

a. All remedial action necessary to protect human health and the environment has been taken.

b. Any additional remedial action found to be necessary after the date of this conveyance regarding hazardous substances that is the responsibility of the GRANTOR shall be conducted by the GRANTOR.

3. A "Finding of Suitability to Transfer" (FOST) dated August 29, 2003, has been prepared stating that hazardous substances have been stored for one year or more, that remedial actions has been taken, and that the property is suitable for transfer under 42 U.S.C. §9620(h)(3)(A)&(B).

The "Environmental Assessment and Finding of No Significant Impact for Return of Ceded Lands at Dillingham Military Reservation, Oahu, Hawaii, to the State of Hawaii," dated May 1998, concluded that the proposed transfer of the ceded lands at Dillingham Military Reservation to the State of Hawaii would not have any adverse impacts on the environment. As a result, it has been determined that the proposed action does not constitute a major federal action having significant effects on the quality of the human environment, and therefore, does not require the completion of an Environmental Impact Statement, as defined by Army Regulation No. 200-2.

The Finding of No Significant Impact (FONSI) and a Notice of Availability of the Environmental Assessment (EA) dated May 1998 were published in the State of Hawaii Department of Health, Office of Environmental Quality Control Bulletin, "The Environmental Notice" on July 13, 1998.

Based on the findings in the FONSI and EA, there are minimal health and safety risks that would result from the transfer of the Property to GRANTEE for the proposed use.

4. Pursuant to 42 U.S.C. §9620(h)(3)(A)(iii), the GRANTOR hereby reserves a right-of-access to the Property in any case in which remedial or corrective action is found to be necessary after the date of this conveyance of the Property, or in case such access is necessary to carry out a response action or corrective action on adjoining property. In exercising this right-of-access, the GRANTOR shall give the GRANTEE, or the then record owner, reasonable prior notice except in case of imminent endangerment to human health or the

environment. GRANTEE agrees that, notwithstanding any other provisions of the Quitclaim Deed, the GRANTOR assumes no liability to the GRANTEE, its successors or assigns, should remediation of the Property interfere with the use of the Property. The GRANTEE shall not through construction, operation or maintenance interfere with any remediation or response action conducted by the GRANTOR under this paragraph. The GRANTEE, or the then record owner, shall have no claim against the GRANTOR or any of its officers, agents, employees or contractors solely on account of any such interference resulting from such remediation.

5. No lights will be used on Lot 1-B-1 between the hours of dusk and dawn, except for emergency situations affecting health and safety and no habitable structures will be constructed. Upon the request of the Army, both outside and inside lighting, that may have an adverse effect on military flight operations conducted at night, will be turned off or adequately subdued on Parcel 2.

NON DISCRIMINATION. With respect to activities related to the Property, the GRANTEE hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, and all requirements imposed by or pursuant to the regulations issued pursuant to the Act and now in effect, to the end that, in accordance with said Act and regulations, no person in the United States shall, on the ground of race, color, national origin, sex, or handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity related to the Property of the GRANTEE, its successors or assigns.

ANTI-DEFICIENCY ACT. The GRANTOR's obligation to pay or reimburse any money under this Quitclaim Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Quitclaim Deed shall be interpreted to require obligations or payment by the GRANTOR in violation of the Anti-Deficiency Act.

The GRANTEE accepts said Property in its present condition without liability to the GRANTOR except to the extent provided in paragraphs 1 and 2 above, and as provided by applicable federal law, including but not limited to the "Environmental Restoration, Defense" provision of the Department of Defense Appropriations Act 1993, Pub. L. No. 102-396.

The GRANTEE acknowledges that it has reviewed the FOST dated August 29, 2003, the EA and FONSI dated May 1998, and the PAS dated January 23, 1996, prior to accepting this deed, that it is aware of and accepts the physical condition and environmental status of the Property on the date the Property is conveyed to GRANTEE and deems it to be safe for its intended use based on said documents.

The GRANTEE releases GRANTOR from any future claims against the GRANTOR by the GRANTEE that may result from the activities of the GRANTEE from the date the Property is conveyed to GRANTEE including activities of the GRANTEE that cause a release or threat of release of any hazardous substance identified in the PAS dated January 23, 1996. In the event that any claims are brought by other parties, the GRANTEE shall hold harmless, indemnify and defend the GRANTOR, to the extent allowed by State of Hawaii law from and against any and all claims, demands, penalties, fines, lawsuits and other proceedings, judgments, awards, and costs and expenses arising out of, or in any way predicated on the activities of the GRANTEE from the date the property is conveyed to the GRANTEE. The GRANTEE shall hold harmless, indemnify and defend the GRANTOR from and against all claims, demands, penalties, fines, lawsuits and other proceedings, judgments, awards, and costs and expenses, including actions and claims seeking to allocate or share response or remedial costs under CERCLA, which do not arise out of or which are not predicated upon hazardous substances or contamination arising out of the activities of the GRANTOR, its lessees, or licensees.

TO HAVE AND TO HOLD the same, together with all and singular the rights, powers, privileges, and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever, if any, of the GRANTOR in the Property, either in law or in equity, unto GRANTEE and its successors and assigns, forever, except as herein provided.

SUBJECT TO existing recorded easements for public roads and highways, public utilities, railroads, pipelines, communication lines and appurtenances and appliances related thereto, and for all other public purposes.

The GRANTEE, by the acceptance of this Quitclaim Deed, covenants for itself, its successors and assigns, and every successor in interest to the Property hereby conveyed, or any part thereof, that the said GRANTEE and such successors and assigns, shall not discriminate upon the basis of race, color, religion, national origin, sex, or handicap in the use, occupancy, sale or lease of the Property, or in the employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

The Property shall be deemed conveyed from the GRANTOR to GRANTEE when the Quitclaim Deed is recorded in the State of Hawaii Bureau of Conveyances.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____, by direction of the Assistant Secretary of the Army (I& E).

UNITED STATES OF AMERICA

By _____
Joseph W. Whitaker
Deputy Assistant Secretary of the Army
(Installations & Housing)
OASA (I&E)

GRANTOR

STATE OF HAWAII

By: _____
Peter T. Young
(Print or type name)
Title: Chairperson, Board of Land and
Natural Resources

GRANTEE

Approved by the Board of Land and Natural Resources on the 11th day of October, 2002 (as to Lot 1-B-1), the 22nd day of August 2003 (as to Parcel 2), and _____.

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY GARRISON, HAWAII
SCHOFIELD BARRACKS, HAWAII 96857-6000



MEMORANDUM OF AGREEMENT
BETWEEN
UNITED STATES ARMY
AND
STATE OF HAWAII

THIS MEMORANDUM OF AGREEMENT, is entered into this _____ day of _____ between the **United States of America, by and through the United States Army**, hereinafter referred to as "**ARMY**" and the **State of Hawaii, by and through its Board of Land and Natural Resources**, hereinafter referred to as "**BLNR**".

Recitals:

WHEREAS, United States Government owns Dillingham Military Reservation, situated at Kaena, Waialua, Oahu, Hawaii, consisting of approximately 663 acres, of which 272 acres are currently leased to the BLNR, and are used as a joint civilian/military airfield under the control and management of the Hawaii Department of Transportation (HIDOT), while the remaining 391 acres are used by the ARMY exclusively for military maneuver training; and

WHEREAS, by Public Law 101-510 Section 2831, the Congress of the United States directed the Secretary of the Army to convey to the State of Hawaii approximately 87 acres of land comprising a portion of Dillingham Military Reservation that had previously been ceded to the United States by the State of Hawaii; and

WHEREAS, a land survey has identified that the actual total acreage of transferred ceded land is 96.71 acres; and

WHEREAS, the conveyance authorized by Pub. L. No. 101-510 Section 2831 was made on condition that the State of Hawaii enter into an agreement that is acceptable to the Secretary of Army; and

WHEREAS, the ceded land will be conveyed to the State of Hawaii by two separate quitclaim deeds, divided into land that will be administered by BLNR, containing 19.237 acres, known as Lot 1-B-1, situate at Kealia and Kaena, Waialua, Oahu, Hawaii, TMK (1) 6-9-01:16, TCT 3633, Land Court Application 588, Map 6, filed in the office of the Assistant Registrar of the Land Court of the State of Hawaii, and Parcel 2, situate at Kaena, Waialua, Oahu, Hawaii, TMK (1) 6-9-01:29 with an area of .298 acres, hereinafter referred to as "Property," and land that will be administered by the HIDOT, containing an area of 77.175 acres, known as Lot 1-B-2, Lot 1-B-3 and Parcel 1; and

WHEREAS, Lot 1-B-1 and Parcel 2 are not currently part of that certain lease wherein the United States leases approximately 272 acres to the BLNR; and

EXHIBIT "4"

WHEREAS, the BLNR property adjoins Lot 1-B-1 on the east and west and Waialua - Kaena Point State Road separates it from Dillingham Army Air Field on the South, and BLNR land completely surrounds Parcel 2; and

WHEREAS, the ARMY desires to transfer the Property to the BLNR for continued public use, its oversight, control and administration, this written Memorandum of Agreement (MOA) establishes, as between the ARMY and the BLNR, the responsibilities of the parties and use priorities of the Property subject to the following conditions:

AGREEMENT

The BLNR and the ARMY agree to the following:

No lights will be used on Lot 1-B-1 between the hours of dusk and dawn, except for emergency situations affecting health and safety and no habitable structures will be constructed. Upon the request of the Army, both outside and inside lighting, that may have an adverse effect on military flight operations conducted at night, will be turned off or adequately subdued on Parcel 2.

IN WITNESS WHEREOF, ARMY and BLNR hereto have executed this MOA as of the day and year first above written.

DEPARTMENT OF THE ARMY

By _____
DAVID L. ANDERSON
Lieutenant Colonel, U.S. Army
District Commander

ARMY

Approved by the
Board of Land and
Natural Resources at its meeting held on October 11, 2002,
August 22, 2003, and _____.

STATE OF HAWAII

By _____
PETER T. YOUNG
Chairperson
Board of Land and Natural Resources

BLNR

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

RECEIVED
LAND DIVISION



2002 SEP 12 A 9:02

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF STATE PARKS
P.O. BOX 621
HONOLULU, HAWAII 96809

GILBERT S. COLOMA-AGARAN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

ERIC HIRANO
DEPUTY DIRECTOR

LINNEL T. NISHIOKA
DEPUTY DIRECTOR FOR
THE COMMISSION ON WATER
RESOURCE MANAGEMENT

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND RESOURCES
ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE
COMMISSION
LAND
STATE PARKS

September 12, 2002

MEMORANDUM

To: Barry Cheung, Oahu District Land Office
Land Division

From: Daniel S. Quinn, State Parks Administrator *D. Quinn*

Subject: Return of the Army Beach in Kaena from USA to the State

Thank you for the opportunity to provide the following comments:

In principle, the State should accept the area. However, we have concerns regarding the existing conditions of the area due to extensive ongoing ATV activity. The site is nearly devoid of any soil binding vegetation, and control of off-road vehicles appears problematic. The Division of State Parks has inadequate resources to manage the area at this time.

If you have questions, please contact Lauren Tanaka at 7-0293, Park Planning Branch.

EXHIBIT "5"